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Supreme Court of the United States

OCTOBER TERM, 1943

No. 228

UNITED STATES OF AMERICA,
Plaintiff-Respondent,

against

THE MORRIS AND ESSEX RAILROAD COMPANY, CORA DREYFUS, LILLIAN A. NEUBERT, and LAURA D. PEPPER,
Defendants-Appellants,

and

THE DELAWARE, LACKAWANNA AND WESTERN RAILROAD COMPANY,
Defendant.

REPLY BRIEF ON BEHALF OF PETITIONERS

The Government rests its case upon a theory which the Court below repudiated. The Government's position is that the Statute involved is 26 U. S. C. A. Section 3710. The Court below in *United States* v. *Metropolitan Life Insurance Co.*, 130 Fed. (2d) 149 held that the Government could not in distraint proceedings enter judgment against a third party for the amount of a debt or an obligation to pay money due to the taxpayer. That holding was expressly adhered to in the opinion below (R. 63-4).

Moreover, the payments due to the stockholders were not property which was "subject to distraint" because the taxpayer has no right whatever to the payments in question. Those rights irrevocably vested in the stockholders and their predecessors seventy-five years ago. So far as we are advised the Government has never before claimed that it could collect the proceeds of an *irrevocable* insurance policy payable to a third party beneficiary in satisfaction of the insured's income taxes. Yet that is the effect of the judgment below. In fact it has been held in other Circuits that the Government may not reach the cash surrender value of even a *revocable* insurance policy. *Cannon* v. *Nicholas* (10th Circuit), 80 Fed. (2d) 934; *Kyle* v. *McGuirk* (3rd Circuit), 82 Fed. (2d) 212.

It is respectfully submitted that this Court should grant the writ of certiorari as prayed for in the petition.

FREDERICK M. SCHLATER,
Counsel for Petitioners, The Morris and Essex Railroad Company, Lillian A. Neubert and Laura D. Pepper.